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FISCAL IMPACT STATEMENT

LS 6681

BILL NUMBER: SB 231

NOTE PREPARED: Jan 30, 2012

BILL AMENDED: Jan 24, 2012

SUBJECT: Contracting with Persons that Invest in Iran.

FIRST AUTHOR: Sen. Wyss

FIRST SPONSOR: Rep. Turner

BILL STATUS: As Passed Senate

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill provides that agencies of state government, state educational institutions, and political subdivisions may not enter into contracts with persons that engage in investment activities in Iran. It also provides that a financial institution may not be designated as a public depository if the financial institution engages in investment activities in Iran.

It also requires the Indiana Department of Administration, using credible information available to the public, to establish a list of persons who engage in investment activities in Iran.

The bill provides for the inclusion of persons on the list and the removal of persons from the list.

Effective Date: July 1, 2012.

Explanation of State Expenditures: *Public Works, State Education Institutions, and the Department of Transportation:* To the extent that a low-cost bidder could be considered nonresponsible as the result of being on the list, costs for public works projects, and for projects of state educational institutions and the Department of Transportation could increase. Additionally, if a financial institution is listed, it may not be designated as a public depository. However, there are provisions allowing a contract to be awarded if the good or service could not otherwise be obtained and in certain other circumstances.

Department of Administration: The Department of Administration (DOA) will have indeterminate increased costs for the administration of a list of persons who engage in investing activities in the energy sector in Iran. The administrative actions that will result in cost increases include compiling the list, maintaining the list,

providing notice to persons who will be listed, and receiving information from listed persons demonstrating that they should not be listed. Any administrative decisions concerning the list may be subject to the administrative appeals process. Ultimately, the costs will depend on the number of persons listed, the number of listed persons who challenge the listing, and the decisions of the DOA in selecting a method of developing and maintaining the list.

Background: The DOA is to publish on its website a list of persons who either provide at least \$20 M of goods or services in the energy sector of Iran or extend at least \$20 M in credit for more than 45 days to another person who uses the credit to provide goods and services in the energy sector of Iran or is a listed person.

The list must be updated every 180 days, and the DOA can develop its own information or contract for development of the list. The list is to be developed from credible, publically available information. Ninety days in advance of publishing the list, the DOA must notify in writing any person who will be listed. The DOA must provide the person who will be placed on the list the opportunity to demonstrate in writing that they do not belong on the list.

A contract may go forward with a listed person if the investments in Iran were made before July 1, 2012; the investment has not increased or been renewed; the purchasing agent determines it is in the best interest of the governmental body to enter into the contract; and the person has adopted and publicized a plan to cease investment activities in Iran. Also, if the executive of a political subdivision or the governor finds that the political subdivision or state would not be able to obtain the good or service otherwise, the contract is permitted to go forward.

California and Florida have similar laws requiring the development of lists. There are 43 persons on California's list as of December 2011. Florida lists persons with investments in Sudan and Iran and has a total of 63 persons on the list as of December 9, 2011. Of these, 14 are listed for Iran alone, 14 are listed for Iran and Sudan together, and 4 were new to the list within the quarterly reporting period.

Explanation of State Revenues: The bill provides that a person entering or renewing a contract must certify in writing that the person is not engaged in investment activities in Iran. If a purchasing agency using credible, publicly available information determines that the statement is false, the agency is to notify the person in writing and allow the person 90 days to respond. If the person fails to demonstrate that the investing activities have ceased, the purchasing agency is to report to the Attorney General, who may bring a civil action against the person. A finding against the person may result in a civil penalty of \$250,000, plus costs. Termination of the contract by the purchasing agency is allowed.

If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed and the costs assigned to the defendant, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$5), judicial salaries fee (\$19), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: See *Explanation of State Expenditures* regarding public works projects.

Explanation of Local Revenues: If the purchasing agency is a political subdivision and there is credible, publicly available information that a certified statement by a person is false, the purchasing agency is to report to the prosecuting attorney of the political subdivision. All penalties are the same.

If additional civil actions occur, local governments would receive revenue from the following sources if costs are assigned to the defendant. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: DOA; Department of Transportation; State Educational Institutions.

Local Agencies Affected: Trial courts, city and town courts.

Information Sources: *Entities Prohibited from Contracting with Public Entities in California per the Iranian Contracting Act, 2010*, California Department of General Services, Procurement Division; *Protecting Florida's Investments Act, Quarterly Report – December 6, 2011*, Table 7: List of Prohibited Investments (Scrutinized Companies), Florida State Board of Administration.

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